



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION III
 1650 Arch Street
 Philadelphia, Pennsylvania 19103-2029

AUG 06 2010

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Dear Mr. (b) (6) :

Thank you for your correspondence of June 2, 2010 to Senator Barbara A. Mikulski concerning the U.S. Environmental Protection Agency's (EPA) recent actions regarding Arch Coal's Spruce No. 1 Surface Mine located in Logan County, West Virginia. The Senator has asked EPA to respond directly to you about this issue.

The Spruce No. 1 Mine is one of the largest mountaintop mining operations authorized in Appalachia and occurs in a watershed where many streams have been previously impacted by mining operations. As authorized, the project will impact 2,278 surface acres and place fill material into approximately 7.5 miles of streams. It is important to note that EPA has not rescinded the permit authorized by the Army Corps of Engineers (Corps) but has initiated a process to determine if the project will have unacceptable adverse effects on the aquatic environment and what outcome from the process, as described below, is most appropriate to address those effects.

Under the Clean Water Act Section 404(c), the EPA Administrator has the authority to prohibit use of a site for deposition of dredged or filled materials in waters of the United States or modify the nature of a project if it is determined that the project would result in unacceptable adverse effects on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. EPA's preference is to address environmental concerns effectively prior to permit issuance. EPA has consistently expressed concerns regarding the magnitude and potential severity of the environmental impacts from the Spruce No. 1 Mine. Among other places, these concerns were expressed in comments provided in response to the Public Notice in July 1999, again in response to the draft Environmental Impact Statement (EIS) in August 2002, followed by additional comments on the final EIS in October and November 2006.

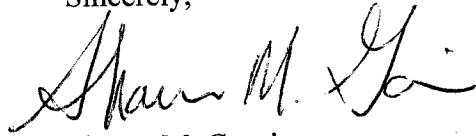
EPA issued a public notice of a Proposed Determination, which was published in the Federal Register on April 2, 2010. Ultimately, EPA's process will result in one of three outcomes: (1) EPA could decide to use its discretion to prohibit any discharges from the project, including the construction of valley fills; (2) EPA could decide that the project cannot go forward under the permit as currently issued, but could go forward under a modified permit that would include more environmentally protective conditions; or (3) EPA could decide that the permit as

currently issued is sufficiently protective. More information about the 404(c) process and copies of relevant documents, including the Proposed Determination, may be found at www.epa.gov/mtntop/spruce1.html.

EPA recognizes the importance of coal to Appalachia and to the nation's energy mix, as well as the importance of a strong, diverse, and sustainable Appalachian regional economy. Nevertheless, EPA's primary obligation is to prevent harm to our waters and the environment based on law and science.

If you have any questions, please do not hesitate to contact me or have your staff contact Mrs. Linda Miller, EPA's Maryland Liaison, at 215-814-2068.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn M. Garvin". The signature is fluid and cursive, with a large initial "S" and a stylized "G".

Shawn M. Garvin
Regional Administrator

